

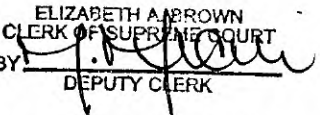
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT HAER,  
Appellant,  
vs.  
CAROL REYES,  
Respondent.

No. 84078-COA

**FILED**

NOV 15 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Robert Haer appeals from a district court custody and support decree and a post-judgment order setting an amount of arrearages and awarding attorney fees. Eighth Judicial District Court, Family Division, Clark County; Michele Mercer, Judge.

Haer and respondent Carol Reyes were never married but have one minor child in common. On September 23, 2020, Reyes filed a complaint for custody. Haer later filed an answer and counterclaim. Haer also disputed paternity and the district court subsequently ordered this matter sealed to protect the privacy of the child pursuant to NRS 126.211. DNA testing confirmed that Haer was the child's father. On May 10, 2021, the district court entered an order adopting the parties' agreed upon parenting plan and ordering temporary child support to be paid by Haer to Reyes in the amount of \$440 based on Haer's reported monthly income of \$2,749. The order also directed Haer to pay an additional \$100 per month toward his total of \$2580 in arrearages from October 1, 2020. In so doing, the court specified that the support order was temporary and would be in place until

verification of Haer's income was completed. The district court also set the matter for trial concerning child support.

The matter proceeded to trial and the parties stipulated to the admission of a number of Haer's financial records. Haer also testified, but the district court later found that his testimony concerning his income and ability to earn additional income was not credible. The court ultimately found that Haer's financial records demonstrated that he was able to earn substantially more income than he claimed to be earning. The court therefore concluded that Haer was willfully underemployed and it imputed income to Haer in the amount of \$7,006 per month. In reaching this figure, the court relied on the bank records, tax documents, and other information that had been presented to the court. The court accordingly set Haer's monthly child support obligation at \$1,100 pursuant to NAC 425.140(1). In addition, the court directed Reyes to file a schedule of arrears to permit the court to ascertain the proper amount of arrearages owed because Haer's inaccurate financial disclosures led it to set the temporary support amount at less than it should have been, causing an underpayment of child support to Reyes. The court also found that Reyes was entitled to attorney fees, but directed her to provide the court with additional briefing concerning the factors from *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

Haer subsequently moved the district court to reconsider its decision to impute additional income to him. Reyes also filed her supplemental brief concerning attorney fees and the schedule of arrears. The court ultimately found that Haer was in arrears in the amount of \$9,240

and ordered Haer to pay \$100 per month toward the arrears. And following a hearing on Haer's motion for reconsideration and Reyes' request for attorney fees, the district court entered a written order denying Haer's motion, finding that Reyes was entitled to reasonable attorney fees pursuant to NRS 18.010, and awarding Reyes attorney fees in the amount of \$1,500. This appeal followed.

First, Haer argues that the district court abused its discretion by imputing income to him. He contends that the court utilized outdated information and that his roofing business is not as successful as it once was. Haer also asserts that the district court did not consider additional pertinent factors, including his poor health, criminal history, and inability to read or write, when it decided to impute additional income to him.

This court reviews child support orders for an abuse of discretion. *Edgington v. Edgington*, 119 Nev. 577, 588, 80 P.3d 1282, 1290 (2003). This court will not disturb the factual findings underlying a child support order if they are supported by substantial evidence, *Miller v. Miller*, 134 Nev. 120, 125, 412 P.3d 1081, 1085 (2018), "which is evidence that a reasonable person may accept as adequate to sustain a judgment," *Ellis v. Carucci*, 123 Nev. 145, 149, 161 P.3d 239, 242 (2007). This court "leave[s] witness credibility determinations to the district court and will not reweigh credibility on appeal." *Id.* at 152, 161 P.3d at 244. District courts are authorized to impute income to an obligor if the court determines the obligor is underemployed or unemployed without good cause. NAC 425.125; *Rosenbaum v. Rosenbaum*, 86 Nev. 550, 554, 471 P.2d 254, 256-57 (1970)

(holding that a district court may impute income to a party that “purposefully earns less than his reasonable capabilities permit”).

Contrary to Haer’s contentions, the district court’s order demonstrates that it considered his specific circumstances when it decided to impute income to him as required by NAC 425.125(2). The court specifically noted that, to impute income to Haer, it had to consider the factors identified within NAC 425.125(2), and it set forth findings relevant to those factors. Among other things, the court explained that it considered Haer’s ability to pay the support order, as well as the fact he received disability payments due to his health conditions, that he had a significant criminal record, and that Haer contended he was unable to read or write.

The court found, however, that despite those issues, Haer’s financial records demonstrated that he had earned a substantial income for a significant period of time. Moreover, the court explained that while Haer testified that he earned approximately \$2,000 per month from his roofing business, it found that Haer’s testimony concerning his income was inconsistent with the documentary evidence. And the court ultimately concluded that Haer’s testimony concerning his income was not credible. Based on Haer’s financial records, the court found that Haer was willfully underemployed and it imputed income to Haer in the amount of \$7,006 per month, which it used to calculate the monthly support payment of \$1,100 per month using the formula outlined in NAC 425.140(1).

This court will not second guess a district court’s resolution of factual issues involving conflicting evidence, *Primm v. Lopes*, 109 Nev. 502, 506-7, 853 P.2d 103, 106 (1993), or reconsider a lower court’s credibility

determination, *Ellis*, 123 Nev. at 152, 161 P.3d at 244. Thus, to the extent that Haer challenges the decision to impute income to him on these grounds, his arguments do not provide a basis for relief. Under the facts of this case, a reasonable mind could accept that there was sufficient evidence presented to support the court's findings regarding Haer's income and its decision to impute income to him. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004) (providing that substantial evidence is evidence that a reasonable person would accept to sustain a judgment). Thus, we conclude that this determination was supported by substantial evidence. *See id.* (providing that district court determinations that are supported by substantial evidence will not be disturbed on appeal). Our conclusion in this regard is further supported by Haer's failure to provide a copy of the trial transcript, which we necessarily presume supports the court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (holding that appellant is responsible for making an adequate record on appeal and when "appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision"). Accordingly, Haer is not entitled to relief based on this claim.<sup>1</sup>

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<sup>1</sup>We recognize that the situation in this matter is not a typical willful underemployment situation as it appears that Haer is employed at his full capacity. However, the record demonstrates that Haer did not provide credible information concerning his income and he obstructed discovery concerning his income. The district court is the finder of fact concerning a parent's income, and the court's findings in this matter concerning Haer's

Second, Haer argues the district court lacked the authority to modify child support from what was awarded in the temporary child support order. Haer appears to contend that the temporary support order operated as a final judgment and was not able to be modified or adjusted pursuant to NRS 125B.140(1)(a). On this basis, Haer challenges the award of arrearages calculated using the revised temporary support payments following the verification of his income. He further challenges the final award of support set forth in the custody and support decree, arguing that the district court lacked authority to modify his support payment from what was set in the temporary support order. We address the latter argument first.

As stated previously, this court reviews child support orders for an abuse of discretion. *Edgington*, 119 Nev. at 588, 80 P.3d at 1290. NRS 125B.140(1)(a) states that an order for the support of a child “is a judgment by operation of law on or after the date a payment is due.” And after a support order becomes a judgment, “[s]uch a judgment may not be retroactively modified or adjusted and may be enforced in the same manner as other judgments of this State.” *Id.* With regard to the district court’s entry of the modified support payment in the custody and support decree, nothing in NRS 125B.140 bars entry of the modified on-going support payment set forth in that order, as the payments set forth in that order had not come due at the time of the order’s entry and, thus, no retroactive

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income are supported by the record; thus, we affirm its decision to impute income to Haer given the facts of this case.

modification was being made. Accordingly, the district court did not abuse its discretion in making this decision. *Edgington*, 119 Nev. at 588, 80 P.3d at 1290.

Turning to the award of arrears based on the modification of the previously entered temporary support payments, NRS 125B.140(1)(b) states that “[p]ayments for the support of a child pursuant to an order of a court which have not accrued at the time either party gives notice that the party has filed a motion for modification or adjustment may be modified or adjusted by the court upon a showing of changed circumstances, whether or not the court has expressly retained jurisdiction of the modification or adjustment.” Here, while the district court entered a temporary support order based on the statements in Haer’s financial disclosure form, the issue of child support set forth in Reyes’ complaint remained unresolved until trial, such that the parties were on notice that the support payments could be modified or adjusted. Further support for this conclusion can be found in the temporary support order itself, which expressly provided that the “amount of temporary child support is without prejudice pending verification of [f]ather’s income.” And following the verification of Haer’s income at trial the district court determined that his financial disclosure form did not accurately report his income.

Under these circumstances, we cannot conclude that the district court abused its discretion in modifying the previously set temporary support payment amounts and setting arrearages based on the revised payments. *Edgington*, 119 Nev. at 588, 80 P.3d at 1290. Thus, we conclude that Haer is not entitled to relief based on this claim.

Finally, Haer challenges the district court's award of attorney fees. This court reviews a district court's award of attorney fees for an abuse of discretion. *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005). An abuse of discretion occurs when the court's decision is not supported by substantial evidence. *Otak Nev., LLC v. Eighth Judicial Dist. Court*, 129 Nev. 799, 805, 312 P.3d 491, 496 (2013). However, "deference is not owed to legal error, or to findings so conclusory they may mask legal error." *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (internal citations omitted). When awarding attorney fees in a family law case, the court must consider the factors set forth in *Brunzell*, 85 Nev. at 349, 455 P.2d at 33, and must also consider the disparity in income pursuant to *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998). *Miller*, 121 Nev. at 623-24, 119 P.3d at 730.

Here, the district court indicated its award of fees was made under NRS 18.010, but failed to specify whether the award was pursuant to NRS 18.010(2)(a) or NRS 18.010(2)(b). And if the court awarded the fees pursuant to NRS 18.010(2)(b), it failed to make any findings relating to the same. See *Henry Prods. Inc. v. Tarmu*, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998) (explaining that the district court's failure to state a basis for an attorney fee award is an abuse of discretion); *but cf. Panicaro v. Robertson*, 113 Nev. 667, 668, 941 P.2d 485, 485-86 (1997) (concluding that although the district court is required to cite the relevant authority for awarding attorney fees, reversal is not required when the basis of the court's award is readily apparent). Moreover, the court's order did not cite *Wright* and it failed to make findings or otherwise demonstrate that it considered the



disparity in the parties' incomes in making the fee award. In light of the lack of clarity regarding the basis of the court's attorney fee award and the failure to demonstrate that the court considered the disparity in income between the parties, we reverse the award of attorney fees and remand this matter to the court for additional findings concerning these issues. See *Miller*, 121 Nev. at 622-24, 119 P.3d at 729-30; see also *Roe v. Roe*, 139 Nev. Adv., Op. 21, 535 P.3d 274, 293-94 (Ct. App. 2023) (explaining the standards for a district court's award of attorney fees pursuant to NRS 18.010(2)(a) and (2)(b)). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

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<sup>2</sup>Insofar as Haer raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Michele Mercer, District Judge, Family Division  
Robert Haer  
Law Office of Stacy Weil, PLLC  
Eighth District Court Clerk